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OPERATIONS INC., ANCESTRY.COM
INC., and ANCESTRY.COM LLC

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ANTHONY SESSA and MARK SESSA, *on
behalf of themselves and all others similarly
situated,*

Plaintiffs,

v.

ANCESTRY.COM OPERATIONS INC., a
Virginia Corporation; ANCESTRY.COM
INC., a Delaware Corporation; and
ANCESTRY.COM LLC, a Delaware Limited
Liability Company,
Defendants.

Case No.: 2:20-cv-02292-GMN-BNW

**JOINT DISCOVERY PLAN AND
PROPOSED ORDER**

Complaint filed: Dec. 17, 2020

1 The parties to the above-entitled action jointly submit this JOINT DISCOVERY PLAN &
2 PROPOSED ORDER pursuant to Civil Local Rule 26-1.

3 **1. Discovery Cut-Off Date.**

4 Plaintiffs' Position: Ancestry filed an anti-SLAPP motion to strike on February 10, 2021
5 (Dkt. No. 19). Plaintiffs believe the motion is baseless. A similar anti-SLAPP motion by Ancestry
6 was denied in a related California case. *Callahan v. Ancestry.com Inc.*, No. 3:20-cv-08437-LB,
7 2021 WL 783524, at *11 (N.D. Cal., Mar. 1, 2021). However, because an anti-SLAPP motion
8 triggers an automatic stay of discovery on topics unrelated to the anti-SLAPP motion itself,
9 Plaintiffs cannot yet commence discovery. Plaintiffs anticipate completing discovery within 12
10 months of the entry of a dispositive ruling on the anti-SLAPP motion.

11 Ancestry Position: As set forth in Ancestry's motion to dismiss and strike, Ancestry disputes
12 the Court's subject-matter jurisdiction based on plaintiffs' lack of Article III standing and also disputes
13 personal jurisdiction over Ancestry. *See* ECF No. 19. In addition, Ancestry's filing of the motion to
14 strike pursuant to Nevada's anti-SLAPP statute automatically stays discovery pending resolution
15 of the motion. Nev. Rev. Stat. § 41.660(3)(e); *See also Foley v. Pont*, No. 2:11-CV-01769-ECR,
16 2012 WL 2503074, at *5 (D. Nev. June 27, 2012) ("staying discovery pending the outcome of the
17 [] Defendants' antiSLAPP motion to dismiss is warranted under NRS 41.660(3)."). Accordingly,
18 it is Ancestry's position that it is premature to engage in discovery or to try to establish a schedule
19 for discovery. This is especially true in light of the automatic right to appeal the denial of an anti-
20 SLAPP motion, which appeal would result in an automatic stay of the district court proceedings
21 (including discovery) until the appeal is resolved.

22 As described more fully in Ancestry's motion to dismiss, this case is one of three virtually
23 identical, class actions in different federal courts that plaintiffs' counsel have filed. The first has
24 already been dismissed for reasons that apply equally here. *See Callahan v. Ancestry.com*, Case
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No. 20-cv-08437-LB, 2021 WL 783524, *4-6 (N.D. Cal. Mar. 1, 2021). A motion to dismiss in the second action will be fully briefed by the end of the month. *See Bonilla v. Ancestry.com*, Case No. 1:20-cv-07390 (N.D. Ill.).

2. Amending the Pleadings and Adding Parties, Expert Disclosures, Dispositive Motions, and Pretrial Order.

Because of Ancestry's pending anti-SLAPP motion, the parties are unable to estimate a specific date for close of discovery. For the same reason, they are not yet able to provide dates for the various deadlines that are measured by reference to the close of discovery. Should this case proceed past the pleadings, Ancestry (1) anticipates filing a motion for summary judgment and a motion to deny class certification, and (2) may engage experts, including with respect to potential class certification issues.

3. Fed. R. Civ. P. 26(a) Disclosures

Plaintiffs' Position: Ancestry has taken the position it is not obligated to provide Rule 26(a) disclosures while the anti-SLAPP motion is pending. Plaintiffs are prepared to exchange Rule 26(a) disclosures at any time.

Ancestry Position: Ancestry objects to the initial disclosure requirement set forth in Federal Rule of Civil Procedure 26(a). Ancestry has filed a motion to strike plaintiffs' complaint pursuant to Nevada's anti-SLAPP statute. Accordingly, discovery is automatically stayed pending resolution of the motion and the disposition of any appeal from the ruling on the motion. Nev. Rev. Stat. § 41.660(3)(e); *Foley v. Pont*, No. 2:11-CV-01769-ECR, 2012 WL 2503074, at *5 (D. Nev. June 27, 2012) ("staying discovery pending the outcome of the [] Defendants' anti-SLAPP motion to dismiss is warranted under NRS 41.660(3).").

4. Alternative Dispute Resolution

The parties have conferred and agree any mediation would be most productive following resolution of Ancestry's pending motion to dismiss and anti-SLAPP motion to strike. If this case

survives the pending motion to dismiss and strike, the parties also agree, subject to approval from the Court, to participate in private mediation.

5. Alternative Forms of Case Disposition

The parties certify that they considered trial by magistrate judge and use of the Short Trial Program. The parties agree that neither are appropriate for this matter.

6. Electronic Evidence

Discovery has not yet begun as resolution of Ancestry's anti-SLAPP motion is pending. Thus, the parties have not yet discussed whether they intend to present evidence in electronic format to jurors.

Respectfully submitted,

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ORDER APPROVING
JOINT DISCOVERY PLAN

IT IS SO ORDERED

UNITED STATES DISTRICT COURT JUDGE

DATED this ____ day of _____ 2020.

Sessa v. Ancestry.com Operations Inc.
2:20-cv-02292-GMN-BNW